

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ABLAISE LTD. and General INVENTORS  
INSTITUTE A, INC.,

Plaintiffs,

v.

BANK OF AMERICA CORPORATION,

Defendants.

C.A. No. 06-530-SLR

**DECLARATION OF KYLE WAGNER COMPTON IN SUPPORT OF  
DEFENDANT BANK OF AMERICA CORPORATION'S  
REPLY BRIEF ON ITS MOTION TO STAY**

I, Kyle Wagner Compton, declare as follows:

1. I am an attorney at Fish & Richardson P.C., counsel of record in this action for Defendant Bank of America Corporation ("Bank of America"). I am a member of the Bar of the State of Delaware and of this Court. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

2. Attached hereto as Exhibit A is a true and correct copy of Defendants Ablaise and General Inventions' Opposition to Plaintiff's Motion For Leave to File A Second Amended Complaint filed on November 21, 2006, in the Northern District of California in *Financial Fusion, Inc. v. Ablaise Ltd. and General Inventions Institute A, Inc.*

3. Attached hereto as Exhibit B is a true and correct copy of Defendants' Answer to Plaintiff's Complaint, Counterclaims, and Jury Demand filed on February 5, 2007, in the Northern District of California in *Yodlee, Inc. v. Ablaise Ltd. and General Inventors Institute A., Inc.*

4. Attached hereto as Exhibit C is a true and correct copy of the Reassignment Order filed on January 22, 2007, in the Northern District of California in *Yodlee, Inc. v. Ablaise Ltd., et al.*

5. Attached hereto as Exhibit D is a true and correct copy of the Reassignment Order filed on January 22, 2007, in the Northern District of California in *Financial Fusion, Inc. et al. v. Ablaise Ltd., et al.*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of February, 2007, at Wilmington, Delaware.

/s/ Kyle Wagner Compton  
Kyle Wagner Compton

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of February, 2007, I electronically filed with the Clerk of Court **DECLARATION OF KYLE WAGNER COMPTON IN SUPPORT OF DEFENDANT BANK OF AMERICA CORPORATION'S REPLY BRIEF ON ITS MOTION TO STAY** using CM/ECF which will send electronic notification of such filing(s) to the following Delaware counsel. In addition, the filing will also be sent via hand delivery:

Thomas C. Grimm  
MORRIS, NICHOLS, ARSHT & TUNNELL  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899-1347

I hereby certify that on this 20<sup>th</sup> day of February, 2007, I have mailed by United States Postal Service, the document(s) to the following non-registered participants:

Thomas G. Scavone  
Matthew G. McAndrews  
NIRO, SCAVONE, HALLER & NIRO  
181 W. Madison Street, Suite 4600  
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*/s/ Kyle Wagner Compton*  
\_\_\_\_\_  
Kyle Wagner Compton (#4693)

# Exhibit A

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Attorneys for Defendants  
ABLAISE LTD. and GENERAL  
INVENTIONS INSTITUTE A, INC.

IN THE UNITED STATES DISTRICT COURT  
THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FINANCIAL FUSION, INC. ) Case No. C 06-02451-PVT  
)  
Plaintiff, ) **DEFENDANTS ABLAISE AND**  
) **GENERAL INVENTIONS' OPPOSITION**  
) **TO PLAINTIFF'S MOTION FOR LEAVE**  
v. ) **TO FILE A SECOND AMENDED**  
) **COMPLAINT**  
ABLAISE LTD. and GENERAL INVENTIONS )  
INSTITUTE A, INC., )  
Defendants. ) Date: December 12, 2006  
) Time: 10:00 a.m.  
) Judge: The Honorable Patricia V. Trumbull  
)

## I. INTRODUCTION

By motion filed November 2, 2006, plaintiff Financial Fusion, Inc. (“FFI”) seeks leave to file a Second Amended Complaint against defendants Ablaise Ltd. and General Inventions Institute A, Inc. (collectively, “Ablaise”) to add counts for declaratory relief concerning the

1 validity and infringement of Ablaise's U.S. Patent No. 6,295,530 ("the '530 patent"). As the  
 2 record now stands, however, there is no subject matter jurisdiction to support FFI's sought claim  
 3 for declaratory relief. Defendants have not accused FFI of infringing the '530 patent. Nor, by its  
 4 own admission, does FFI have any connection to the websites of its customer, Bank of America,  
 5 which have been accused of infringing the '530 patent. The parties do not dispute these issues.

6 Because there is no actual controversy between FFI and Ablaise concerning the validity  
 7 and infringement of the '530 patent, the amendment FFI seeks would be futile. The futility of  
 8 FFI's proposed amended claims is dispositive of the issue at bar. As a matter of law, FFI's motion  
 9 should be denied for lack of subject matter jurisdiction over declaratory judgment claims  
 10 concerning the '530 patent.

11 **II. RELEVANT FACTS**

12 On February 6 and February 7, 2006, Ablaise sent letters to Bank of America and First  
 13 Horizon, respectively, notifying these banks that their websites infringe claims of Ablaise's U.S.  
 14 Patent No. 6,961,737 ("the '737 patent"). Ablaise was unaware when it sent these notice letters,  
 15 but has since learned, that FFI provided website design services to Bank of America and First  
 16 Horizon. On April 6, 2006, FFI filed this declaratory judgment action against Ablaise for the  
 17 alleged purpose of defending its customers, Bank of America and First Horizon, pursuant to an  
 18 indemnification agreement against patent infringement claims by Ablaise.

19 In materials that accompanied Ablaise's initial notice letter to Bank of America, and in  
 20 correspondence and telephone conversations with Bank of America and FFI since April 6, 2006,  
 21 Ablaise has identified two specific sections of Bank of America websites that infringe the '737  
 22 patent, namely the "Financial News" section of the bank's milbankonline.bankofamerica.com  
 23 site and the "My Portfolio" section of the bank's allmyaccounts.bankofamerica.com site. *See*  
 24 Declaration of Thomas G. Scavone ("Scavone Decl."), ¶ 1, Ex. A, T. Scavone letter to L. Thayer,  
 25 5/1/2006 (identifying "Financial Page" facility of Bank of America/Military Bank site as  
 26 infringing the '737 patent); Scavone Decl., ¶ 2, Ex. B, T. Scavone letter to M. Springs, 7/26/2006  
 27 (identifying "My Portfolio" facility of allmyaccounts.bankofamerica.com site as infringing the  
 28 '737 patent); Scavone Decl., ¶ 4.

1       Over the course of Ablaise's dealings with FFI, FFI has given the impression – and  
 2 Ablaise has assumed – that FFI, as a service provider or supplier, was only responsible for design  
 3 or development work associated with a single Bank of America website, the Bank of  
 4 America/Military Bank site (i.e., the militarybankonline.bankofamerica.com site). *See* Scavone  
 5 Decl. ¶ 3. On November 17, 2006, counsel for FFI confirmed Ablaise's understanding in this  
 6 regard, acknowledging that, to the best of plaintiff's counsel's knowledge, FFI has performed  
 7 design, development and/or service work only in connection with the Bank of America/Military  
 8 Bank website. *See* Declaration of Matthew G. McAndrews ("McAndrews Decl."), ¶ 1. Based on  
 9 its analysis to date, Ablaise has not identified the Bank of America/Military Bank website as, or  
 10 accused the site of, infringing the '530 patent. Thus, to the extent Ablaise has any justiciable  
 11 controversy with FFI, that controversy is necessarily limited to the Bank of America/Military  
 12 Bank website's infringement of the '737 patent.

13       On the correct understanding and assumption that it has independent and distinct legal  
 14 claims against Bank of America that are unrelated to FFI, Ablaise filed suit against Bank of  
 15 America in the District Court of Delaware on August 28, 2006. Subsequently, after further review  
 16 of Bank of America's websites by Ablaise's technical and legal teams, Ablaise identified a third  
 17 Bank of America website, mbnanetaccess.com,<sup>1</sup> which infringes the '530 patent. On October 10,  
 18 2006, Ablaise amended its complaint in the Delaware action as a matter of right to include a claim  
 19 of infringement of the '530 patent against Bank of America. As stated, Ablaise has not alleged  
 20 that the Military Bank website – the sole Bank of America site having any relationship to FFI –  
 21 infringes the '530 patent.

22       FFI alleges that it filed the instant declaratory judgment action to defend Bank of America  
 23 against Ablaise's patent infringement claims pursuant to an indemnification agreement. FFI's  
 24 Mem. in Support of Mot. for Leave to File 2<sup>nd</sup> Amend. Complaint at 1. However, FFI has offered  
 25 no evidence – and it is implausible – that its indemnity agreement with Bank of America requires  
 26 or allows FFI to defend Bank of America against claims having no relationship to FFI, such as  
 27 Ablaise's claim in the Delaware action that Bank of America's mbnanetaccess.com website

28  
 1<sup>1</sup> MBNA is a subsidiary of Bank of America.

1 infringes the '530 patent. Regardless of its terms, the indemnity agreement cannot confer subject  
 2 matter jurisdiction where, as here, there is no controversy between FFI and Ablaise concerning the  
 3 '530 patent, let alone infringement of the '530 patent by a website to which FFI has no  
 4 relationship.

5 **III. THERE IS NO LEGAL BASIS FOR FFI'S SOUGHT AMENDMENT**

6 To prevail on its Motion for Leave to File a Second Amended Complaint, FFI must satisfy  
 7 the Ninth Circuit's standard for amendment under Federal Rule of Civil Procedure 15(a) and, as  
 8 with any other claims, demonstrate that there is subject matter jurisdiction over its proposed  
 9 claims for declaratory judgment of non-infringement and invalidity of the '530 patent. Because  
 10 the undisputed facts reveal that there is no controversy between FFI and Ablaise concerning the  
 11 '530 patent, FFI cannot satisfy either standard, and its motion must be denied.

12 **A. Amendment Should Be Denied Because The Sought Claims Are Futile**

13 Despite the liberal amendment standards of Rule 15(a), Ninth Circuit law requires that a  
 14 motion to amend be denied if the amendment would be futile. *See Roth v. Garcia Marquez*, 942  
 15 F.2d 617, 628 (9<sup>th</sup> Cir. 1991). An amendment is futile if a claim's defeat on summary judgment  
 16 would be inevitable. *Roth*, 942 F.2d at 628-29. It follows that, as here, an amendment is futile if  
 17 there is no subject matter jurisdiction over the proposed amended claims.

18 In the case at bar, the undisputed record demonstrates that Ablaise's claim for infringement  
 19 of its '530 patent in the Delaware action has nothing to do with FFI. FFI has affirmatively  
 20 acknowledged that it was not involved in the "design, development or servicing" of the  
 21 mbnanetaccess.com website – the only Bank of America website identified to date as infringing  
 22 the '530 patent. McAndrews Decl., ¶ 1; Scavone Decl., ¶ 4. Notably, FFI fails to address whether  
 23 its declaratory judgment claim for non-infringement of the '530 patent is not futile. Instead, FFI  
 24 leapfrogs that part of the analysis and argues that it "seeks leave to add a claim of invalidity of the  
 25 '530 Patent on the basis of prior art of which it has become aware." FFI's Mem. at 6. Without an  
 26 actual controversy concerning the *infringement* of the '530 patent, however, FFI has no basis to  
 27 challenge the validity of the patent. A contrary rule would allow any party to bring a declaratory  
 28 judgment claim challenging the validity of any patent at any time. That is not the law. *See, e.g.*,

1 *Medimmune, Inc. v. Genentech, Inc.*, 427 F.3d 958, 964 (Fed. Cir. 2005) (holding that the  
 2 Declaratory Judgment Act requires a “definite and concrete controversy” concerning patent  
 3 infringement and that “the district court did not err in holding that [the declaratory judgment  
 4 plaintiff], since under no threat of apprehension or suit, did not have standing to bring a  
 5 declaratory challenge to the [patent-in-suit]”).

6 In its brief, FFI makes much of the fact that the ‘530 patent is the “parent” of the ‘737  
 7 patent, the latter of which is, at least in part, at issue in the case at bar. FFI’s Mem. at 1, 5-6. FFI  
 8 appears to argue that because the Court has ruled that it has subject matter jurisdiction over some  
 9 of Ablaise’s claims for infringement of the ‘737 patent it follows that there is subject matter  
 10 jurisdiction over FFI’s declaratory judgment claim concerning invalidity of the parent ‘530 patent.  
 11 This argument, too, is contrary to the law. Courts are not only to apply the “actual controversy”  
 12 analysis on a patent-by-patent basis, but also on a “claim-by-claim” basis with respect to a patent-  
 13 in-suit. *Jervis B. Webb Co. v. Southern Sys., Inc.*, 742 F.2d 1388, 1399 (Fed. Cir. 1984) (the  
 14 existence of a case or controversy is evaluated on a “claim-by-claim” basis); *see also Carroll*  
 15 *Touch, Inc. v. Electro Mechanical Sys., Inc.*, 15 F.3d 1573, 1581 n.8 (Fed. Cir. 1993). Thus, the  
 16 fact that the ‘530 patent is the parent of the ‘737 patent is irrelevant to the present jurisdictional  
 17 analysis. The relevant inquiry is whether there is an actual controversy between FFI and Ablaise  
 18 concerning the infringement of the ‘530 patent.

19 **B. There Is No Actual Controversy Concerning The ‘530 Patent**

20 FFI bears the burden of demonstrating that there is an “actual controversy” under the  
 21 Declaratory Judgment Act, 28 U.S.C. §2201. *Teva Pharmaceuticals USA, Inc. v. Pfizer Inc.*, 395  
 22 F.3d 1324, 1331 (Fed. Cir. 2005). Specifically, FFI must demonstrate both:

23 (1) an explicit threat or other action by the patentee which creates a reasonable  
 24 apprehension on the part of the declaratory judgment plaintiff that it will face an  
 25 infringement suit, and (2) present activity by the declaratory judgment plaintiff  
 26 which could constitute infringement or concrete steps taken by the declaratory  
 27 judgment plaintiff with the intent to conduct such activity.

28 *Teva Pharmaceuticals*, 395 F.3d at 1330 (citing *Amana Refrigeration, Inc. v. Quadlux, Inc.*, 172

1 F.3d 852, 855 (Fed. Cir. 1999)).

2 The analysis begins and ends with FFI's admission that it has no connection to the Bank of  
 3 America website accused by Ablaise of infringing the '530 patent in the Delaware action. Ablaise  
 4 has not alleged infringement of the '530 patent in the instant action, and the parties have not  
 5 discussed infringement of the '530 patent by any website other than the one at issue in the  
 6 Delaware action. FFI does not have a dog in the Delaware fight. FFI's motion asks the Court to  
 7 create a controversy where none exists. The Court should decline to do so by denying FFI's  
 8 motion.

9 As discussed, there is no justiciable controversy between the parties concerning the '530  
 10 patent. Instead, Ablaise has properly brought its separate and distinct legal claims against Bank of  
 11 America, the party that, on this record, is solely responsible for infringing the '530 patent.  
 12 However, even if the Court determined that a controversy did exist, it should exercise its  
 13 "substantial discretion" by declining jurisdiction. *See, e.g., Teva Pharmaceuticals*, 395 F.3d 1324,  
 14 1331 (Fed. Cir. 2005) ("Even if there is an actual controversy, the district court is not required to  
 15 exercise declaratory judgment jurisdiction, but has *substantial discretion* to decline that  
 16 jurisdiction." (emphasis added)). Two out of three of the accused websites in this and the Delaware  
 17 actions have no relationship to FFI. Ablaise should be able to pursue claims concerning those two  
 18 websites against Bank of America in the Delaware action, rather than in the Northern District of  
 19 California against FFI.

20 **IV. CONCLUSION**

21 For the foregoing reasons, Ablaise respectfully submits that FFI's Motion for Leave to File  
 22 a Second Amended Complaint should be denied.

23 Dated: November 20, 2006.

Respectfully Submitted,

24 /s/ Martin L. Fineman

25 Martin L. Fineman

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13 INVENTIONS INSTITUTE A, INC.  
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DAVIS WRIGHT TREMAINE LLP

# Exhibit B

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 18 INVENTIONS INSTITUTE A, INC.

19  
 20 UNITED STATES DISTRICT COURT  
 21 NORTHERN DISTRICT OF CALIFORNIA  
 22 OAKLAND DIVISION

23 YODLEE, INC.,

24 Case No. C 06 7222 SBA

25 Plaintiff,

26 **DEFENDANTS' ANSWER TO  
 27 PLAINTIFF'S COMPLAINT,  
 28 COUNTERCLAIMS, AND JURY DEMAND**

29 **DEMAND FOR JURY TRIAL**

30 ABLAISE LTD. and GENERAL  
 31 INVENTORS INSTITUTE A, INC.

32 Defendants.

33  
 34 Defendants, Ablaise Ltd. and General Inventions Institute A, Inc. (collectively  
 35 "Defendants"), answer the Complaint of Plaintiff, Yodlee, Inc. ("Plaintiff"), as follows:

36 **INTRODUCTION AND BACKGROUND**

37 1. Yodlee, Inc. ("Yodlee") hereby brings this action for declaratory judgment against  
 38 Ablaise Ltd. ("Ablaise") and General Inventors Institute A, Inc. ("GIIA"). Specifically, Yodlee

1 seeks, among other things, declaratory judgment of non-infringement, invalidity and  
 2 unenforceability of U.S. Patent No. 6,961,737 (“the ‘737 patent”), titled “Serving Signals,” and  
 3 declaratory judgment of non-infringement, invalidity and unenforceability of U.S. Patent No.  
 4 6,295,530 (“the ‘530 patent”), titled “Internet Service of Differently Formatted Viewable Signals  
 Including Commands for Browser Execution.”

5 **RESPONSE:**

6 Admitted.

7 2. Yodlee is a software company that was founded by four software engineers who  
 8 invented a new technology that collects personal information from various sites throughout the  
 9 Internet so that the information can be presented to an end user in one location. Although Yodlee  
 10 itself is hardly a household name, its patented software has been adopted by dozens of well-  
 11 known financial institutions, such as Bank of America and Compass Bank. Yodlee has 20 United  
 12 States patents and more than 35 pending U.S. applications related to its data aggregation  
 13 technology.

14 **RESPONSE:**

15 Defendants lack sufficient information with which to form a belief as to the truth of the  
 16 averments in paragraph 2 and therefore deny the same.

17 3. Upon information and belief, Ablaise is a patent holding company that makes no  
 18 products and whose principal business is licensing and enforcing patents. GIIA and Ablaise claim  
 19 to collectively own the ‘737 and ‘530 patents at issue in this suit. The ‘737 patent purports to be a  
 20 continuation of the ‘530 patent.

21 **RESPONSE:**

22 Defendants admit that they claim ownership of the ‘737 and ‘530 patents at issue in this  
 23 suit and that the ‘737 patent is a continuation of the ‘530 patent. Denied as to the remaining  
 24 averments in paragraph 3.

25 4. On or about July 26, 2006, counsel for Ablaise sent a letter to Bank of America  
 26 alleging that the “My Portfolio” facility of the Bank of America web site “practice[s] the method  
 27 recited in claim 1 of the ‘737 patent.” This letter included a purported “infringement analysis,”  
 28 which compared screenshots from Bank of America’s website to Claim 1 of the ‘737 patent. This  
 letter also referred Bank of America to an Ablaise licensing proposal.

29 **RESPONSE:**

30 Admitted.

1       5. On August 28, 2006, Ablaise and GIIA filed suit against Bank of America in the  
 2 District of Delaware, alleging that Bank of America “infringed one or more claims of the ‘737  
 3 patent by making, using, and operating its bankofamerica.com and related websites throughout  
 4 the United States,” and seeking damages, preliminary and permanent injunctions. On October 10,  
 5 2006, Ablaise and GIIA filed a first amended complaint adding the ‘530 patent to that suit.

6       **RESPONSE:**

7       Admitted.

8       6. Bank of America is a customer of Yodlee. Specifically, Bank of America and  
 9 Yodlee are parties to an agreement entitled “Aggregation Services Agreement No. 23373-001”  
 10 whereby Yodlee agreed to provide and Bank of America agreed to use certain Yodlee products to  
 11 provide Bank of America’s customers online information.

12       **RESPONSE:**

13       Defendants lack sufficient information with which to form a belief as to the truth of the  
 14 averments in paragraph 6 and therefore deny the same.

15       7. The “My Portfolio” facility of the Bank of America website identified by Ablaise  
 16 in its July 26th letter to Bank of America was created by, developed by, provided by and  
 17 supported by Yodlee under its agreements with Bank of America. Yodlee and Bank of America  
 18 have also entered into an indemnification agreement, whereby Yodlee has agreed to indemnify  
 19 Bank of America for claims made against those portions of the Bank of America website  
 20 provided by Yodlee.

21       **RESPONSE:**

22       Defendants lack sufficient information with which to form a belief as to the truth of the  
 23 averments in paragraph 7 and therefore deny the same.

24       8. On or about April 10, 2006, counsel for Ablaise sent a letter to Compass Bank  
 25 (“Compass”), alleging that its “compassweb.com website practices the inventions claimed in the  
 26 ‘737 patent.” This letter included a “representative infringement analysis for Claim 1 of the ‘737  
 27 patent,” which compared screenshots from the compassweb.com website to elements in Claim 1  
 28 of the ‘737 patent. The letter also noted that “the compassweb.com website infringes a number of  
 other ‘737 patent claims.”

29       **RESPONSE:**

30       Admitted.

31       9. Compass Bank is also a customer of Yodlee. As early as June 22, 2001, Compass  
 32 and Yodlee signed a “Standard Co-Branded Service Agreement” whereby Yodlee agreed to

1 provide and Compass agreed to use Yodlee's products to provide Compass' customers online  
2 information on the compassweb.com website.

3 **RESPONSE:**

4 Defendants lack sufficient information with which to form a belief as to the truth of the  
5 averments in paragraph 9 and therefore deny the same.

6 10. The portions of the Compass website identified by Ablaise in the presentation it  
7 sent along with its April 10th letter to Compass involved those portions of the Compass website  
8 created by, developed by, provided by and supported by Yodlee under its agreements with  
9 Compass. Compass and Yodlee have also entered into an indemnification agreement, whereby  
Yodlee has agreed to indemnify Compass for claims made against the portions of the  
compassweb.com website provided by Yodlee.

10 **RESPONSE:**

11 Defendants lack sufficient information with which to form a belief as to the truth of the  
12 averments in paragraph 10 and therefore deny the same.

13 11. In addition to the Bank of America litigation, upon information and belief Ablaise  
14 and GIIA have also filed suits and/or have been involved in litigation against a number of other  
15 companies alleging infringement of the '737 and/or '530 patents, including: CDW Corporation;  
J&R Electronics; Lowe's Home Centers, Inc.; Investools, Inc.; Salesforce.com, Inc.; E\*Trade  
16 Securities, LLC; Financial Fusion, Inc.; Lycos, Inc.; and Dow Jones & Company, Inc. Upon  
information and belief, the Salesforce.com, E\*Trade Securities, and Financial Fusion litigations  
17 were all filed in the Northern District of California.

18 **RESPONSE:**

19 Admitted.

20 **THE PARTIES**

21 12. Yodlee is a corporation organized and existing under the laws of the State of  
Delaware having its principal place of business at 3600 Bridge Parkway, Suite 200, Redwood  
22 City, California 94065-1170.

23 **RESPONSE:**

24 Defendants lack sufficient information with which to form a belief as to the truth of the  
25 averments in paragraph 12 and therefore deny the same.

26 13. Upon information and belief, Ablaise is a British corporation with its principal  
place of business at 40 Queen Anne Street, London, WIG9EL, United Kingdom.

1 **RESPONSE:**

2 Admitted.

3

4 14. Upon information and belief, GIAA is a British Virgin Islands corporation with a  
5 principal place of business at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, British  
6 Virgin Islands.

7 **RESPONSE:**

8 Admitted.

9 **JURISDICTION AND VENUE**

10

11 15. This is a declaratory judgment action brought pursuant to the Federal Declaratory  
12 Judgment Act, 28 U.S.C. § 2201, for patent non-infringement and invalidity arising under the  
13 patent laws of the United States, Title 35, United States Code. This Court has jurisdiction over the  
14 causes of action stated herein pursuant to 35 U.S.C. § 101 et seq. and 28 U.S.C. §§ 1331, 1338(a)  
15 and 2201.

16 **RESPONSE:**

17 Admitted.

18 16. Upon information and belief, Ablaise and GIIA are subject to personal jurisdiction  
19 in this forum because they have purposefully availed themselves of the privilege of doing  
20 business in California, including negotiating and granting licenses in California, and engaging in  
21 litigation in the Northern District of California.

22 **RESPONSE:**

23 Admitted.

24 17. Alternatively, jurisdiction is proper in the Northern District of California under  
25 Fed. R. Civ. P. 4(k)(2). This cause of action arises under the patent laws of the United States.  
26 Defendants Ablaise and GIIA are not subject to the jurisdiction of the courts of general  
27 jurisdiction in any particular state. Additionally, Ablaise and GIIA have at least minimum  
28 contacts with the United States because, among other things, Defendants have obtained patent  
rights in the United States including the '737 and '530 patents, granted licenses to a number of  
major United States companies and presumably derive income from those licenses, entered into  
negotiations with United States companies to license the '737 and '530 patents, engaged in  
litigation against United States companies in various United States District Courts, including the  
Northern District of California, and used attorneys located in the United States to send notice  
letters to U.S. companies including Bank of America and Compass Bank.

1        **RESPONSE:**

2                Admitted.

3

4                18.      Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c), (d), and  
5                1400(b) because Ablaise and GIIA are alien corporations, Yodlee is located in this judicial  
6                district, several acts that allegedly constitute infringement took place in this judicial district, and  
7                defendants have engaged in significant activity in this district, including negotiating and granting  
8                licenses and engaging in litigation in this district.

9

10        **RESPONSE:**

11                Admitted.

12

13        **COUNT ONE: NON-INFRINGEMENT OF THE '737 PATENT**

14

15                19.      Yodlee incorporates by reference and realleges paragraphs 1 through 18 above as  
16                if fully set forth herein.

17

18        **RESPONSE:**

19                Defendants repeat and incorporate their responses to paragraphs 1-18 of Plaintiff's  
20                Complaint.

21

22                20.      The products and services provided by Yodlee and utilized by its customers do not  
23                infringe, directly, indirectly, contributorily, or otherwise, any claim of the '737 patent.

24

25        **RESPONSE:**

26                Denied.

27

28                21.      As evidenced by the threatening letters to Yodlee's customers, including Bank of  
29                America and Compass Bank, and as evidenced by the lawsuits filed against Yodlee's customer  
30                Bank of America and against other defendants in this and other judicial districts, there is a real,  
31                substantial, and continuing justiciable controversy between the parties regarding Defendants'  
32                allegations of patent infringement.

33

34        **RESPONSE:**

35                Admitted that there is a real, substantial, and continuing justiciable controversy between  
36                the parties regarding Plaintiff's infringement of the '737 patent. Denied as to the other averments  
37                in paragraph 21.

1  
2 22. Yodlee is entitled to a judgment declaring that Yodlee and its customers do not  
infringe any claim of the 137 patent.

3 **RESPONSE:**

4 Denied.

5 **COUNT TWO: INVALIDITY OF THE '737 PATENT**

6  
7 23. Yodlee incorporates by reference and realleges paragraphs 1 through 22 above as  
if fully set forth herein.

8 **RESPONSE:**

9 Defendants repeat and incorporate their responses to paragraphs 1-22 of Plaintiff's  
10 Complaint.

11  
12 24. The claims of the '737 patent are invalid for failure to satisfy the requirements of  
Part U of Title 35 of the United States Code, including, without limitation the requirements of one  
13 or more of 35 U.S.C. §§ 101, 102, 103 and/or 112.

14 **RESPONSE:**

15 Denied.

16  
17 25. As evidenced by the threatening letters to Yodlee's customers, including Bank of  
America and Compass Bank, and as evidenced by the lawsuits filed against Yodlee's customer  
18 Bank of America and against other defendants in this and other judicial districts, there is a real,  
substantial, and continuing justiciable controversy between the parties regarding the validity of  
19 Defendants' patents.

20 **RESPONSE:**

21 Admitted that there is a real, substantial, and continuing justiciable controversy between  
22 the parties regarding the validity of the '737 patent. Denied as to the other averments in  
23 paragraph 25.

24  
25 26. Yodlee is entitled to a judgment declaring that the '737 patent is invalid.

26 **RESPONSE:**

27 Denied.

### COUNT THREE: UNENFORCEABILITY OF THE '737 PATENT

27. Yodlee incorporates by reference and realleges paragraphs 1 through 26 above as if fully set forth herein.

## **RESPONSE:**

Defendants repeat and incorporate their responses to paragraphs 1-26 of Plaintiff's Complaint.

28. Defendants are barred by the equitable doctrine of unclean hands from enforcing the '737 patent against Yodlee and its customers.

## **RESPONSE:**

Paragraph 28 includes conclusions of law to which Defendants are not required to respond. To the extent a response is required, Defendants deny the allegations in paragraph 28.

29. Defendants are also barred by the equitable doctrine of prosecution laches from enforcing the '737 patent against Yodlee and its customers. Specifically, the inventors and assignees of the '737 patent unreasonably and inexcusably delayed the prosecution of several claims of the '737 patent, including at least claim 1 of the '737 patent. Numerous claims, including claim 1 of the '737 patent, were presented to the USPTO years after the filing of the original application from which the '737 patent claims priority, including many claims presented as late as February 25, 2005, which is almost nine years after the May 15, 1996, filing of U.S. Patent Application No. 08/647,769. On information and belief, Defendants and/or named inventors submitted these claims after an unreasonable and inexcusable delay in an attempt to wrongly acquire for themselves the publicly-known developments of the Plaintiff and others – developments that were made without any knowledge or reliance on the alleged invention disclosed in U.S. Patent Application No. 08/647,769.

## **RESPONSE:**

Paragraph 29 includes conclusions of law to which Defendants are not required to respond. To the extent a response is required, Defendants admit that the prosecution file history of the '737 patent is a matter of public record. Plaintiffs characterizations of that record, in paragraph 29, which are not contained in the '737 prosecution file history, are denied.

30. As evidenced by the threatening letters to Yodlee's customers, including Bank of America and Compass Bank, and as evidenced by the lawsuits filed against Yodlee's customer Bank of America and against other defendants in this and other judicial districts, there is a real, substantial, and continuing justiciable controversy between the parties regarding the enforceability of Defendants' patents.

1      **RESPONSE:**

2              Admitted that there is a real, substantial, and continuing justiciable controversy between  
 3 the parties regarding the enforceability of the '737 patent. Denied as to the other averments in  
 4 paragraph 30.

5  
 6              31. Yodlee is entitled to a judgment declaring that the '737 patent is unenforceable due  
 to unclean hands and/or prosecution laches.

7      **RESPONSE:**

8              Denied.

10     **COUNT FOUR: NON-INFRINGEMENT OF THE '530 PATENT**

11  
 12              32. Yodlee incorporates by reference and realleges paragraphs 1 through 31 above as  
 if fully set forth herein.

13      **RESPONSE:**

14              Defendants repeat and incorporate their responses to paragraphs 1-31 of Plaintiff's  
 15 Complaint.

16  
 17              33. The products and services provided by Yodlee do not infringe, directly, indirectly,  
 contributorily, or otherwise, any claim of the '530 patent.

18      **RESPONSE:**

19              Denied.

20  
 21              34. As evidenced by the threatening letters to Yodlee's customers, including Bank of  
 America and Compass Bank, and as evidenced by the lawsuits filed against Yodlee's customer  
 22 Bank of America and against other defendants in this and other judicial districts, there is a real,  
 substantial, and continuing justiciable controversy between the parties regarding Defendants'  
 23 allegations of patent infringement.

24      **RESPONSE:**

25              Admitted that there is a real, substantial, and continuing justiciable controversy between  
 26 the parties regarding Plaintiff's infringement of the '530 patent. Denied as to the other averments  
 27 in paragraph 34.

1  
2       35. Yodlee is entitled to a judgment declaring that Yodlee and its customers do not  
infringe any claim of the '530 patent.  
3

4       **RESPONSE:**

5       Denied.  
6

7       **COUNT FIVE: INVALIDITY OF THE '530 PATENT**  
8

9       36. Yodlee incorporates by reference and realleges paragraphs 1 through 35 above as  
if fully set forth herein.  
10

11       **RESPONSE:**

12       Defendants repeat and incorporate their responses to paragraphs 1-35 of Plaintiff's  
Complaint.  
13

14       37. The claims of the '530 patent are invalid for failure to satisfy the requirements of  
Part II of Title 35 of the United States Code, including, without limitation the requirements of one  
or more of 35 U.S.C. §§ 101, 102, 103 and/or 112.  
15

16       **RESPONSE:**

17       Denied.  
18

19       38. As evidenced by the threatening letters to Yodlee's customers, including Bank of  
America and Compass Bank, and as evidenced by the lawsuits filed against Yodlee's customer  
Bank of America and against other defendants in this and other judicial districts, there is a real,  
substantial, and continuing justiciable controversy between the parties regarding the validity of  
Defendants' patents.  
20

21       **RESPONSE:**

22       Admitted that there is a real, substantial, and continuing justiciable controversy between  
the parties regarding validity of the '530 patent. Denied as to the other averments in paragraph  
34.  
23

25       39. Yodlee is entitled to a judgment declaring that the '530 patent is invalid.  
26

27       **RESPONSE:**

28       Denied.  
29

1  
2 **COUNT SIX: UNENFORCEABILITY OF THE '530 PATENT**  
34 40. Yodlee incorporates by reference and realleges paragraphs 1 through 39 above as  
if fully set forth herein.  
56 **RESPONSE:**  
78 Defendants repeat and incorporate their responses to paragraphs 1-39 of Plaintiff's  
9 Complaint.  
1011 41. Defendants are barred by the equitable doctrines of unclean hands from enforcing  
the '530 patent against Yodlee and its customers.  
1213 **RESPONSE:**  
1415 Paragraph 41 includes conclusions of law to which Defendants are not required to  
16 respond. To the extent a response is required, Defendants deny the allegations in paragraph 41.  
1718 42. As evidenced by the threatening letters to Yodlee's customers, including Bank of  
19 America and Compass Bank, and as evidenced by the lawsuits filed against Yodlee's customer  
20 Bank of America and against other defendants in this and other judicial districts, there is a real,  
21 substantial, and continuing justiciable controversy between the parties regarding the  
22 enforceability of Defendants' patents.  
2324 **RESPONSE:**  
2526 Admitted that there is a real, substantial, and continuing justiciable controversy between  
27 the parties regarding enforceability of the '530 patent. Denied as to the other averments in  
28 paragraph 34.  
2930 43. Yodlee is entitled to a judgment declaring that the '530 patent is unenforceable due  
31 to unclean hands.  
3233 **RESPONSE:**  
3435 Denied.  
36  
37  
38

**COUNTERCLAIMS****COUNT ONE**

Defendants-counter-complainants, Ablaise Ltd. and General Inventions Institute A, Inc. (collectively “Ablaise”), bring this counterclaim for infringement of the ‘737 patent:

1. This is a claim for patent infringement and arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction over the subject matter of the Complaint under 28 U.S.C. § 1338(a).

2. Ablaise is a British corporation.

3. GIIA is a British Virgin Islands Corporation.

4. On information and belief, Plaintiff-counter-defendant Yodlee, Inc. (“Yodlee”) is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at 3600 Bridge Parkway, Suite 200, Redwood City, California 94065-1170.

5. Ablaise owns and has standing to sue for infringement of United States Patent No. 6,961,737 (“the ‘737 patent”) (Ex. A.), entitled, “Serving Signals.”

6. The ‘737 patent was duly and legally issued by the United States Patent and Trademark Office on November 1, 2005.

7. Yodlee has infringed, induced, or contributed to the infringement by others of one or more claims of the ‘737 patent as defined in 35 U.S.C. § 271, in this judicial district and throughout the United States by making, using selling, offering to sell, supplying, and causing to be supplied web-based software for performing financial transactions and website development services, such as those described in paragraphs 2 and 7 of plaintiff’s Complaint. On information and belief, FFI knew or should have known its actions would induce actual infringement of the ‘737 patent by others.

8. Yodlee’s infringement of the ‘737 patent will continue unless enjoined by this Court.

9. On information and belief, Yodlee’s infringement of the ‘737 patent has always been deliberate and willful.

10. Ablaise has been damaged by the infringing acts of Yodlee.

1           11. Ablaise will continue to be damaged unless and until Yodlee is restrained from its  
2 infringing acts by this Court.

3 WHEREFORE, Ablaise prays for judgment as set forth below.

## **COUNT TWO**

6 Ablaise brings this counterclaim for infringement of the '530 patent:

7           12. Ablaise incorporates by reference and realleges paragraphs 1 through 10 above as  
8 if fully set forth herein.

9 13. Ablaise owns and has standing to sue for infringement of United States Patent No.  
10 6,295,530 ("the '530 patent") (Ex. B.), entitled, "Internet Service of Differently Formatted  
11 Viewable Data Signals Including Commands For Browser Execution."

14. The '530 patent was duly and legally issued by the United States Patent and  
12  
13 Trademark Office on September 25, 2005.

14. 15. Yodlee has infringed, induced, or contributed to the infringement of one or more  
16. claims of the '530 patent as defined in 35 U.S.C. § 271, in this judicial district and throughout the  
17. United States by making, using selling, offering to sell, supplying, and causing to be supplied  
18. web-based software for performing financial transactions and website development services, such  
19. as those described in paragraphs 2 and 7 of plaintiff's Complaint, throughout the United States,  
20. including this judicial district. On information and belief, FFI knew or should have known its  
actions would induce actual infringement of the '530 patent by others.

21        16.      Yodlee's infringement of the '530 patent will continue unless enjoined by this  
22      Court.

23        17. On information and belief, Yodlee's infringement of the '530 patent has always  
24        been deliberate and willful.

18 Ablaise has been damaged by the infringing acts of Yodlee

26 19. Ablaise will continue to be damaged unless and until Yodlee is restrained from its  
- infringing acts by this Court

## **PRAYER FOR RELIEF**

WHEREFORE, Ablaise demands judgment against Yodlee, including Yodlee's affiliates, officers, agents, servants, employees, and all persons in active concert or participation with them, as follows:

(a) Dismissal of Plaintiff's Complaint and denial of all the relief sought in such Complaint;

(b) An order enjoining Yodlee from infringing, inducing others to infringe, and/or contributing to the infringement of the '737 and '530 patents or, in the alternative, entry of a compulsory license;

(c) An award to Ablaise of such damages as it shall prove at trial against Yodlee, after a full accounting of all damages that Ablaise has suffered as a result of Yodlees' unlawful conduct, said damages to be no less than a reasonable royalty;

(d) An award to Ablaise of all damages so determined for willful infringement, in accordance with 35 U.S.C. § 284, together with prejudgment interest;

(e) A determination that this case is exceptional within the meaning of 35 U.S.C. § 285, and an award to Ablaise of the costs of this action and reasonable attorneys' fees; and

(f) Such other relief as this Court and/or a jury may determine to be proper and just.

## **DEMAND FOR JURY TRIAL**

Ablaise and General Inventions Institute hereby demand a trial by jury of all issues in this action.

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1 Dated: February 5, 2007

Respectfully Submitted,

2 /s/ Martin L. Fineman

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15 Phone: (312) 236-0733  
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17 Attorneys for Defendants  
18 ABLAISE LTD. and GENERAL INVENTIONS  
19 INSTITUTE A, INC.

20  
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28

# Exhibit C

UNITED STATES DISTRICT COURT

Northern District of California  
280 South First Street  
San Jose, California 95113

[www.cand.uscourts.gov](http://www.cand.uscourts.gov)

Richard W. Wiking  
Clerk

General Court Number  
408.535.5364

January 22, 2007

**CASE NUMBER: CV 06-07222 PVT**

**CASE TITLE: YODLEE, INC.-v-ABLAISE LTD. ET AL**

**REASSIGNMENT ORDER**

GOOD CAUSE APPEARING THEREFOR,

IT IS ORDERED that this case is reassigned to the **Oakland** division.

**Case Assigned to the Honorable Saundra Armstrong Brown** for all further proceedings.

Counsel are instructed that all future filings shall bear the initials **SBA** immediately after the case number.

ALL MATTERS PRESENTLY SCHEDULED FOR HEARING ARE VACATED AND SHOULD BE RENOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THE CASE HAS BEEN REASSIGNED.

Date: 1/22/07

FOR THE EXECUTIVE COMMITTEE:

*Richard W. Wiking*  
\_\_\_\_\_  
Clerk

NEW CASE FILE CLERK:

Copies to: Courtroom Deputies  
Log Book Noted

Special Projects  
Entered in Computer 1/22/07

CASE SYSTEMS ADMINISTRATOR:

Copies to: All Counsel

Transferor CSA

# Exhibit D

UNITED STATES DISTRICT COURT

Northern District of California

280 South First Street

San Jose, California 95113

[www.cand.uscourts.gov](http://www.cand.uscourts.gov)

Richard W. Wiking  
Clerk

General Court Number  
408.535.5364

**January 22, 2007**

**CASE NUMBER: CV 06-02451 PVT**

**CASE TITLE: FINANCIAL FUSION, INC., ET AL v-ABLAISE LTD., ET AL**

**REASSIGNMENT ORDER**

GOOD CAUSE APPEARING THEREFOR,

IT IS ORDERED that this case is reassigned to the **Oakland** division.

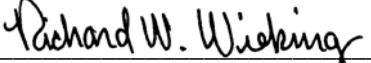
**Case Assigned to the Honorable Saundra Armstrong Brown** for all further proceedings.

Counsel are instructed that all future filings shall bear the initials **SBA** immediately after the case number.

ALL MATTERS PRESENTLY SCHEDULED FOR HEARING ARE VACATED AND SHOULD BE RENOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THE CASE HAS BEEN REASSIGNED.

Date: 1/22/07

FOR THE EXECUTIVE COMMITTEE:

  
\_\_\_\_\_  
Clerk

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